



REPORT

on improving the court monitoring and evaluation system in Ukrainian courts

May 2021

The Project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights" is funded by the Human Rights Trust Fund

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List of Abbreviations

CoE	Council of Europe
CM	Council of Ministers of the Council of Europe
Convention or ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
CEPEJ	European Commission for the Efficiency of Justice of the Council of Europe
Supreme Court Working Group	Supreme Court Working Group tasked with solving issues of an excessive length of court proceedings in the context of the execution of the judgments of the European Court of Human Rights in the cases of " <i>Svetlana Naumenko v Ukraine</i> " and " <i>Merit v. Ukraine</i> ".
Project	Council of Europe project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights", which is funded by the Human Rights Trust Fund and implemented by the Department for the implementation of Human Rights, Justice and Legal Co-operation Standards of the Council of Europe
ICMS	Integrated case management system
M&E	Court monitoring and evaluation systems

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Executive summary

Throughout 2020, the Supreme Court and the Project organised a series of activities aimed at supporting the Ukrainian institutions with the development of a comprehensive approach towards the resolution of the long-standing and structural issue of the excessive length of judicial proceedings in Ukraine (in the context of the execution of the *Svetlana Naumenko / Merit* group of judgments). Following one of the requests, the Project engaged a former CEPEJ expert, Mr Adis Hodzic, who participated in various public events and produced the assessment of mechanisms permitting the collection of data on the length of court proceedings based on the good practice of the Council of Europe member states¹. In view of this assessment, in 2021 the Supreme Court Working Group requested further assistance with the introduction of the proposed M&E in the Supreme Court.

To solve the problem of the excessive length of judicial proceedings, it is recommended that Ukraine applies an integrated approach to judicial administration, which covers five stages² of development for the M&E. The introduction of such a system in Ukrainian courts will enable the authorities to assess if changes to the legislation and institutional framework of the operation of the judiciary have had a positive impact, whether additional measures are required, and in what sectors of operation of the judiciary. Furthermore, the establishment of such data collection tools is expected by the CM for the execution of the ECtHR judgments in the *Svetlana Naumenko* and *Merit* groups of cases³.

Consequently, the Project continued cooperation with Mr Adis Hodzic, requesting him to participate in consultations with the Ukrainian institutions and prepare a final report with the necessary guidance and recommendations for the Supreme Court and other Ukrainian courts regarding the improvement of the existing court monitoring and evaluation system. This upgraded system, among other things, should measure the length of judicial proceedings and help with their acceleration. Therefore, the present report reflects the results of the conducted activities and draws recommendations on the steps to be considered by the Ukrainian authorities in view of implementing a proper court management system, which will establish a proper picture of the state of affairs as to the length of judicial proceedings.

Following the consultation with the Ukrainian state institutions, the expert emphasised that the increased or reduced court performance depends on the combination of factors, which include the resources allocated, methods of evaluating court performance, and the use of IT that should be seen as a lever for improvement rather than as an end in itself⁴. Thus, an effective court management system should include:

- proactive role of court president with clear managerial responsibility,

¹ Please see the Assessment of CEPEJ tools for the comprehensive statistical data collection on the length of court proceedings to comply with Article 6 of the European Convention on Human Rights: <https://rm.coe.int/report-cepej-tools-for-statistical-data-system-merit-and-naumenko-case/1680a11679>

² Based on “Monitoring and Evaluation of Court System: A Comparative Study”, CEPEJ available at <https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-monitoring-and/16807882ba>. In general, these stages include: bureaucratic data collection (assessing and utilizing existing sources of data); normative framework (assessing existing definitions of success and formulating key performance indicators); institutional capacity (assessing existing institutional capacity and mapping key processes); performing monitoring and evaluation function (assessing existing monitoring and evaluation, as well as policy-making functions); and accountability and action (assessing capacity to make decisions based on evidence produced).

³ See for details the Interim Resolution CM/ResDH (2020)208 adopted by the Committee of Ministers on 1 October 2020 at the 1383rd meeting of the Ministers' Deputies of the Council of Europe.

⁴ European Judicial Systems. Efficiency and quality of justice. CEPEJ studies N24, available at: <https://rm.coe.int/european-judicial-systems-efficiency-and-quality-of-justice-cepej-stud/1680788229>

- performance based budgeting with operational targets and objective measures for the courts, and
- central coordination body in charge of court administration (i.e. the Norwegian Court Administration, the Department of Judicial Administration within Ministry of Justice of Finland, Federal Ministry of Justice of Austria).

It is recommended that Ukraine introduces an early warning system with a precisely defined information workflow directed at a central coordination body. This could be achieved by setting up a reporting mechanism that activates supervisors to work on solution strategies once a problem is detected.

Another important step for Ukraine is to successfully apply all five stages⁵ in introducing proactive monitoring and evaluation function in its court system. To proceed with this task, the basic elements of the M&E were successfully introduced in the Supreme Court.

From February to April 2021, several online meetings were conducted with the Supreme Court representatives to discuss the data being collected and the indicators used for determining the efficiency of court performance. Resting on the information received, a court management system was developed for the Supreme Court (see APPENDIX: Dashboards views by Week and Year) and respective training for the users of this system was conducted.

In light of cooperation with the Supreme Court in the first half of 2021, the following recommendations were formulated:

- The Supreme Court should continue applying the introduced practice of weekly reporting and short court management meetings to encourage active case management and proactively detect possible violations of Article 6 of the ECHR and react accordingly to prevent future violations of this article. If possible, a weekly report should also include the aging structure of unresolved cases, as illustrated in Figure 20 Aging of Pending cases: 60, 90 and 180 days.
- The Supreme Court should, as an integral part of the court management system, introduce an electronic register of cases with identified violations of Article 6 of the ECHR and monitor the status of their execution through structured and standardised court management meetings. In that regard, the following case-level data should be considered in building an electronic register of cases:
 - Unique case identification number (ID) at first instance
 - Initial (original) filing date at the first instance (initiation day from a party point of view)
 - Unique case identification number (ID) at Supreme court
 - Case registration date at Supreme court
 - Case type
 - Status of a case (status of case execution)
 - Reporting date
- The Supreme Court should consider using Public Internal Financial Control (PIFC) approach promoted by the European Union (Chapter 32: Financial control) to develop and introduce “... *an effective and transparent management system, including accountability arrangements for the achievement of objectives...*”⁶. Essentially, applying PIFC would require Supreme Court to, among other things, map business

⁵ Please see the Assessment of CEPEJ tools for the comprehensive statistical data collection on the length of court proceedings to comply with Article 6 of the European Convention on Human Rights: <https://rm.coe.int/report-cepej-tools-for-statistical-data-system-merit-and-naumenko-case/1680a11679>

⁶ Ibid.

processes related to monitoring and evaluation, set objectives and goals, and identify M&E process owners.

In addition, building on the experience of the Supreme court, the next steps are recommended to the Ukrainian authorities in order to introduce the proactive M&E in all Ukrainian courts. Recommendations are grouped around the main stages⁷ of development for the M&E:

Defining success

- Standardised key performance indicators like Clearance Rate, Disposition time, Cases per judge, Case flow and Backlog trend and structure, Aging of Pending cases should be considered by the High Council of Justice and the State Judicial Administration of Ukraine to be introduced in all Ukrainian courts.
- Accompanying goals and targets related to key performance indicators should be set (i.e. all civil cases should be solved in six months, all criminal cases should be solved in three months, Clearance Rate should not fall below 100%, etc.) by the High Council of Justice and the State Judicial Administration of Ukraine.

Identifying data sources

- The State Judicial Administration of Ukraine should identify data sources needed for producing key performance indicators. It needs to be noted that most probably sources of data will be spread among various court departments (i.e. Human Resources, Finance and Accounting, etc.)

Capacity Building

- The High Council of Justice and the State Judicial Administration of Ukraine should develop a high-level design of the ICT system needed for introducing decentralised (at court level) and centralised clearly specifying needs and gaps related to a case management system, data warehousing, business intelligence modules, etc. In that regard, most probably close cooperation between the Supreme Court, the High Council of Justice, the State Judicial Administration of Ukraine, the Ministry of Justice of Ukraine, and the international community will be needed to secure financing of development and maintenance of such ICT system(s).
- In order to develop a court management system in every court and ensure the sustainability of digitally transformed M&E process the State Judicial Administration of Ukraine should consider using the Public Internal Financial Control (PIFC) approach promoted by the European Union (Chapter 32: Financial control) to develop and introduce "... *effective and transparent management system, including accountability arrangements for the achievement of objectives...*"⁸. Essentially, applying PIFC would require every court to, among other things, map business processes related to monitoring and evaluation, set objectives and goals, and identify M&E process owners. This will also require every court to introduce obligatory weekly / monthly management meetings.

⁷ Based on "Monitoring and Evaluation of Court System: A Comparative Study", CEPEJ available at <https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-monitoring-and/16807882ba> In general, these stages include: bureaucratic data collection (assessing and utilizing existing sources of data); normative framework (assessing existing definitions of success and formulating key performance indicators); institutional capacity (assessing existing institutional capacity and mapping key processes); performing monitoring and evaluation function (assessing existing monitoring and evaluation, as well as policy-making functions); and accountability and action (assessing capacity to make decisions based on evidence produced).

⁸ Ibid.

- At the centralised level the Supreme Court, the High Council of Justice, the State Judicial Administration of Ukraine, should receive training in scientific methods for M&E. In that regard, a multidisciplinary team should be formed at a centralised level so that they can also perform the function of training in M&E for individual courts and court presidents.

Turning data into actionable knowledge, Performing M&E

- At the court level, court presidents with heads of departments should at least on monthly basis, measure court performance using standardised key performance indicators and goals and objectives set at a centralised level by the Supreme Court, the High Council of Justice, the State Judicial Administration of Ukraine.
- At the court level, for courts that fail to reach set targets, annual reporting in a standardised form containing cause-and-effect analysis should be introduced. The report should contain information on: *Why is there a problem?* (What happened since the previous report from last year?), *What has the president done to improve or support the spotlighted court department?* and *What are the president's suggestions to the State Judicial Administration of Ukraine?*
- At the centralised level, benchmarking among the courts should be performed at least once a year using standardised key performance indicators.
- Based on performed benchmarking and “cause and effect analysis” using court reports, the State Judicial Administration of Ukraine would, if needed, prepare policy options / recommendations for improving court performance through i.e. reallocation of resources, training, better management practices, etc.

Taking the lead: Accountability and Action

- At the court level, court presidents with heads of departments should be obliged to take or suggest remedial actions whenever problems surface.
- At the centralised level, the Supreme Court, the High Council of Justice should consider policy options / recommendations prepared by the State Judicial Administration of Ukraine.

1. Building Monitoring and Evaluation System (M&E) in the Ukrainian Judiciary

International best governance practices in the M&E function within the judiciary, call for a holistic approach in institutional capacity development for quality evidence-based policymaking. Following five stages⁹ process of development of the M&E system, a basic backbone of the M&E system was successfully introduced in the Supreme Court, with particular attention to:

- (i) Statistics and Data Collection.
- (ii) Normative Framework including key performance indicators (KPIs).
- (iii) Institutional Capacity Building and Process Improvement.
- (iv) Performance Monitoring and Evaluation Arrangements.
- (v) Policy Action and Decision Making.

In that regard, initial consultation meetings were organized with the representatives of the Supreme Court in February 2021 in an attempt to exchange information related to available data and statistics in the Supreme Court. It was agreed that available statistical reports of the Supreme Courts will be translated to English and delivered to the expert to assess whether available data are sufficient to design key performance indicators and apply a holistic approach in institutional capacity development for quality evidence-based policymaking.

1.1 Statistics and Data Collection

As agreed, the Head of the Department of the Analytical and Legal Work of the Supreme Court provided a set of 21 translated forms / tables with accompanying data, including:

Contents of the report No 1-BC

Section 1. General indicators of justice administration

1. Synopsis of Section 1. Additional indicators of justice administration
2. Section 2. Effectiveness of justice administration by a form of procedural application and types of judicial proceedings
3. Section 3. Effectiveness of justice administration on the grounds of appeals and cases
4. Section 4. Effectiveness of justice administration on the grounds of cassation appeals and cases
5. Section 5. Effectiveness of justice administration on the grounds of cassation appeals and cases according to a type of judicial proceedings and category of judicial cases
6. Section 5.1. Effectiveness of cassation review according to the number of persons in criminal judicial proceedings
7. Section 6. Efficiency of justice administration in cassation procedure

Contents of the Report No 6-BC

Section 1. General indicators of justice administration

8. Synopsis of Section 1. Additional indicators of justice administration

⁹ Ibid.

9. Section 2. Effectiveness of justice administration on the grounds of appeals
10. Section 3. "Effectiveness of justice administration on the grounds of cassation appeals by their general categories"
11. Section 3.1. "Effectiveness of justice administration on the grounds of cassation appeals by their categories (since 2020)"
12. Section 3.2. "Effectiveness of justice administration on the grounds of cassation appeals by their categories (till 2020)"
13. Section 4. Effectiveness of justice administration in cassation procedure by judicial chambers and the joint chamber

Operational Statistical Reports

14. Operational Statistical Report on the Management of Procedural Applications and Cases of the Supreme Court for the period from 04.01.2021 to 29.01.2021 (by a cumulative total of data) by judicial chambers and the joint chamber.
15. Operational Statistical Report on the Management of Procedural Applications and Cases of the Supreme Court for the period from 04.01.2021 to 29.01.2021 (by a weekly total of data) by judicial chambers and the joint chamber.

Annual Reports

16. Annual report of the Supreme Court for 2018
17. Annual report of the Supreme Court for 2019
18. Annual report of the Supreme Court for 2020

On the basis of the analysis of the existing statistical reports, the expert concluded that the main characteristics of the reporting practices in the Supreme Court are the following:

1. The Supreme Court produces an impressive volume of data and reports related to their activities,
2. All reviewed reports present absolute numbers (i.e., 25,000 incoming civil cases, and 19,000 outgoing cases)
3. There are no defined key performance indicators (i.e. Clearance Rate is 76%).

The approach of presenting absolute numbers without defined and calculated key performance indicators in the reports is making analysis and detection of the problem almost impossible. This approach nearly paralyzes a management function of the Supreme Court.

In that regard, during the period February – March 2021 four operational bilateral online meetings with the Head of the Department of Analytical and Legal Work of the Supreme Court were held and technical procedures and practices related to statically reporting in the Supreme Court were discussed. Based on data, reports, and information provided by the Head of the Department of Analytical and Legal Work of the Supreme Court, the expert prepared a comprehensive data collection sheet with key indicators to better assess and improve the operational performance of the Supreme Court. It was agreed with the Head of Statistics Department of the Supreme Court that this data will be populated on a weekly basis.

Alongside applying the cumulative data populated on a weekly basis by the Supreme Court, building a cloud-based business intelligence platform for data collection, and programming interactive dashboards to be used for introducing proactive court management practices in the

Supreme Court, the expert implanted digital transformation of the existing reporting process within the Supreme Court. In that regard, the costs of developing and maintaining the cloud-based business intelligence platform were covered by the expert for the period February – June 2021.

Finally, the results of the joint work between the Supreme Court and the expert were presented at the Workshop on improving the collection and analysis of judicial data for policymaking purposes on April 19, 2021.

Figure 1 Supreme court Dashboard: Weekly reporting

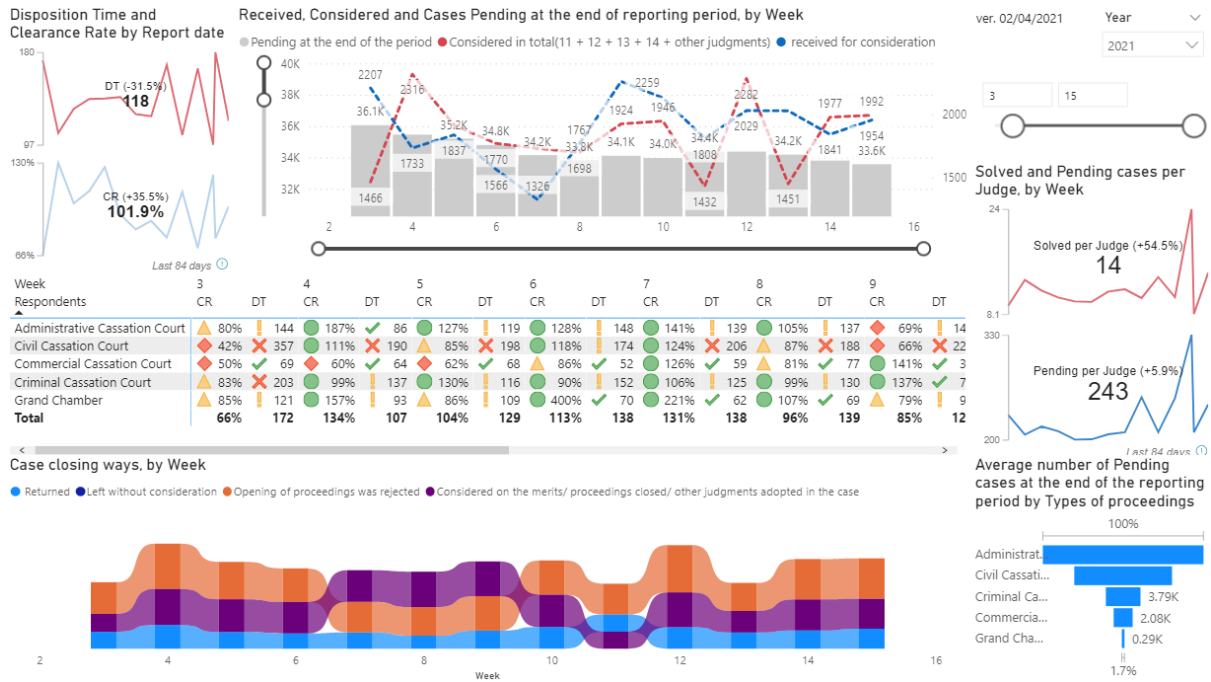
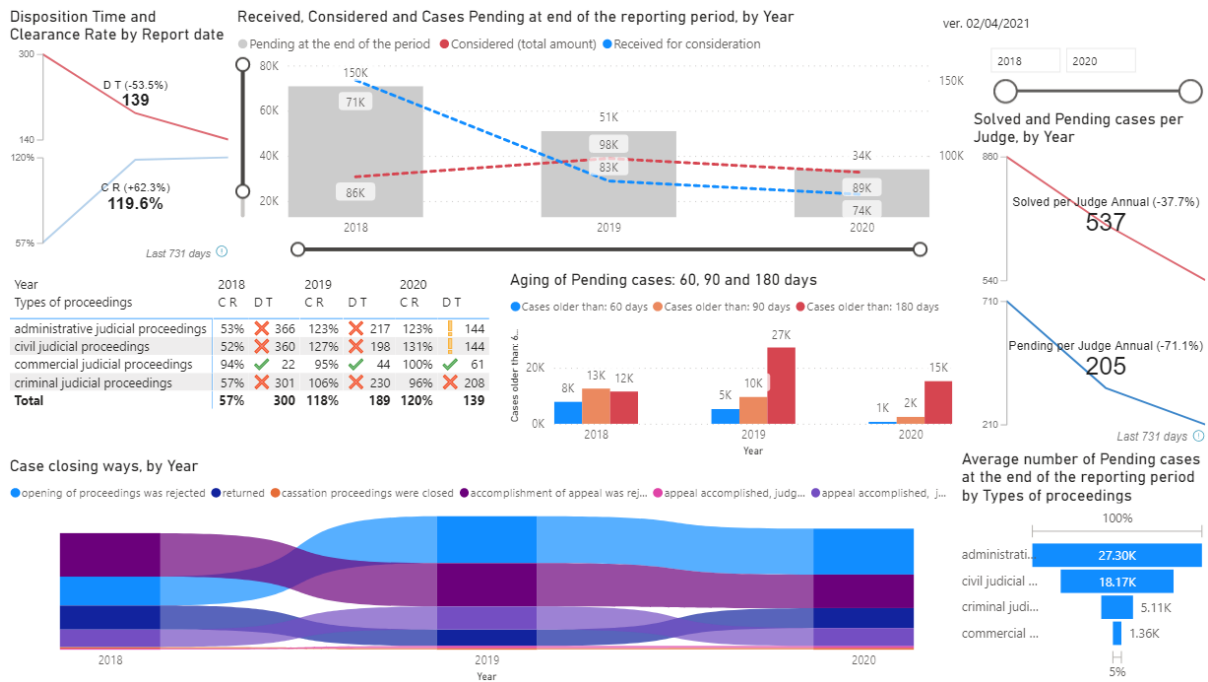


Figure 2 Supreme court Dashboard: Annual reporting



Following the conducted discussions with the participants during the workshop, it was agreed that:

1. Interactive dashboards present great improvement in the reporting and create an excellent foundation for the informed and proactive Supreme Court management and policymaking.
2. The digitally transformed process of weekly and annual reporting should be continued and implemented together with accompanied by court management meetings where weekly and annual data would be discussed in a structured and standardised way.

Furthermore, the Supreme Court should, as an integral part of the court management system, introduce an electronic register of cases with identified violations of Article 6 of the ECHR and monitor the status of their execution through structured and standardised court management meetings. In that regard, the following case-level data should be considered in building an electronic register of cases:

- Unique case identification number (ID) at first instance
- Initial (original) filing date at the first instance (initiation day from a party point of view),
- Unique case identification number (ID) at Supreme court
- Case registration date at Supreme court
- Case type
- Status of a case (status of case execution)
- Reporting date

1.2 Normative Framework including key performance indicators (KPIs)

Advanced judicial administrations have clearly defined success criteria related to time management, cost efficiency/productivity, and quality. To develop and implement a court management system, it is necessary to clearly define and establish timeframes established for major case types and monitor their implementation. In that regard, key performance indicators (KPI) should be clearly defined, targets set, and communicated to all court presidents.

However, measuring the time and duration of judicial proceedings will only detect “symptoms” related to court-case processing delays. Besides dimension of time, countries with advanced judicial administrations (Austria, Germany, Netherlands, Norway, etc.)¹⁰ have scientifically developed and standardized court performance frameworks and governance practices also covering dimensions of cost efficiency and quality. Such standardized court performance frameworks and governance practices are used to not only describe symptoms (such as court-case processing delays) but perform diagnostics allowing for a critical assessment of court performance making a switch from experience-based management or “gut feeling” (sometimes concealing political favouritism or even corruption) to transparent “scientific evidence” approach in managing court operations eliminating unjustified excuses that additional resources are needed to deliver court service to citizens while identifying courts that really need help to handle the workload.

As described under chapter 1.1 Statistics and Data Collection above, based on the existing statistical reports, the expert concluded that the main characteristics of the reporting practices in the Supreme Court are the following:

1. The Supreme Court produces an impressive volume of data and reports related to their activities,
2. All of the reviewed reports present absolute numbers (i.e., 25,000 incoming civil cases, and 19,000 outgoing cases)
3. There are no defined key performance indicators (i.e. Clearance Rate is 76%).

The approach of presenting absolute numbers without defined and calculated key performance indicators in the reports is making analysis and detection of the problem almost impossible. This approach nearly paralyzes a management function of the Supreme Court.

In that regard, based on experience European Commission for the Efficiency of Justice (CEPEJ)¹¹, the next indicators can be used as a foundation for building foundations of the Normative Framework including key performance indicators (KPIs) as described in chapter Indicators 1.2.1 below.

¹⁰ Assessment based on two CEPEJ publications (“Time management of justice systems: a Northern Europe study” available at <https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-time-managemen/16807882bb> and “Case weighting in judicial systems, CEPEJ studies No. 28”, available at [16809ede97 \(coe.int\)](https://rm.coe.int/16809ede97)) and professional experience of the expert.

¹¹ “REVISED SATURN GUIDELINES FOR JUDICIAL TIME MANAGEMENT (3 rd revision)” As adopted at the 31th plenary meeting of the CEPEJ Strasbourg, 3 and 4 December 2018 [TE0801648 \(coe.int\)](https://rm.coe.int/TE0801648)

1.2.1 Indicators

The performance of courts should be examined from various aspects. Advanced judicial administrations have clearly defined success criteria related to time management, cost efficiency/productivity, and quality. However, due to their complexity, not all aspects could be covered in the initial stage of the development of a court management system. For instance, the adoption of modern budgeting techniques (like program budgeting or performance-based budgeting) is required before cost efficiency indicators can be introduced in courts.

However, the set of indicators (CEPEJ)¹² can be used as a foundation for building foundations of Normative Framework including key performance indicators (KPIs), as follows:

1. Clearance rate,
2. Disposition time
3. Backlog (absolute numbers and trend)
4. Cases per judge (solved and pending)
5. Besides calculated Disposition Time, if reporting systems of the court are sophisticated enough, it is also important to measure the duration of cases from the initial registration date. This will enable monitoring the duration of proceedings per certain predefined and agreed categories, for example, aging of pending cases per 60, 90, and 180 days.

1.2.1.1 Clearance Rate

The clearance rate is one of the most commonly used indicators in monitoring the court case flow. The clearance rate percentage is obtained when the number of resolves cases is divided by the number of incoming cases and the result is multiplied by 100:

$$\text{Clearance Rate (\%)} = \frac{\text{Resolved cases in a period}}{\text{Incoming cases in a period}} * 100$$

The clearance rate that equals 100 percent indicates the ability of the court or a judicial system to resolve cases received within the given period of time. The clearance rate above 100 percent indicates the ability of the system to resolve more cases than received, thus reducing any potentially existing backlog. Finally, if received cases are not resolved within the reporting period, the clearance rate will fall below 100 percent. When the clearance rate goes below 100 percent, the number of unresolved cases at the end of a reporting period (backlog) will rise.

The CEPEJ-TF-DEL developed the Time Management Checklist -"Checklist of indicators for the analysis of lengths of proceedings in the justice system"¹³ prepared as a tool for internal use of its stakeholders whose purpose is to help justice systems to collect appropriate information and analyse relevant aspects of the duration of judicial proceedings with a view to

¹² Ibid.

¹³ CEPEJ (2005) 12 REV Time Management Checklist – Checklist of indicators for the analysis of the lengths of proceedings in the justice system and the other relevant documents by the CEPEJ

reduce undue delays, ensure the effectiveness of the proceedings and provide the necessary transparency and foreseeability to the users of the justice systems.

The inability of courts or judiciary to produce data needed for calculation of clearance rate could clearly demonstrate insufficiently developed tools described in parts one, three, four, and five of the CEPEJ's Time Management Checklist, referring to the ability to assess the overall length of proceedings, sufficiently specified typology of cases, ability to monitor the course of proceedings and means to promptly diagnose delays and mitigate their consequences.

1.2.1.2 Backlog Change

Backlog Change is giving the relation of the number of pending cases at the end of a period and the beginning of this period, indicating if backlog can be reduced or is increasing.

1.2.1.3 Calculated Disposition Time and Case Turnover Ratio

The disposition time provides further insight into how the judicial system manages its flow of cases. In general, the case turnover ratio and disposition time compare the number of resolved cases during a reporting period and the number of unresolved cases at the end of a period. The ratios measure how frequently the judicial system (or a court) turns over received cases – that is, how long it takes for a type of cases to be resolved.

The relationship between the number of resolved cases during a reporting period and the number of unresolved cases at the end of the period can be expressed in two ways. The first calculates a number of times during the year (or another reporting period) that the average case types are turned over or resolved. The case turnover ratio is calculated as follows:

$$\text{Case Turnover Ratio} = \frac{\text{Number of resolved cases in a period}}{\text{Number of unresolved cases at the end of period}}$$

The second method produces the number of days that cases are outstanding or remain unresolved in court. Also known as the disposition time (DT), this is calculated by taking the case turnover ratio and dividing the result into the 365¹⁴ days in a year as follows:

$$\text{Calculated Disposition Time} = \frac{365}{\text{Case Turnover Ratio}}$$

The additional effort required to convert a case turnover ratio into days is justified by the simpler understanding of what this relationship entails. For example, a protraction in a judicial disposition time from 57 days to 72 days is much easier to grasp than a decline in case turnover ratio from 6.4 to 5.1. The conversion to days also makes it easier to compare a judicial system turnover with the projected overall length of proceedings or established standards for the duration of proceedings.

¹⁴ Assuming that the reporting period is a calendar year, some analysts use 360 days at the numerator on the basis that is easier to calculate; that is, 30 days x 12 months = 360. The five-day difference has little effect on the result. The important issue is to be consistent and use 360 or 365 days for calculation of ratio trend. If the reporting period is one month, then the numerator 30 can be used to ease the calculation.

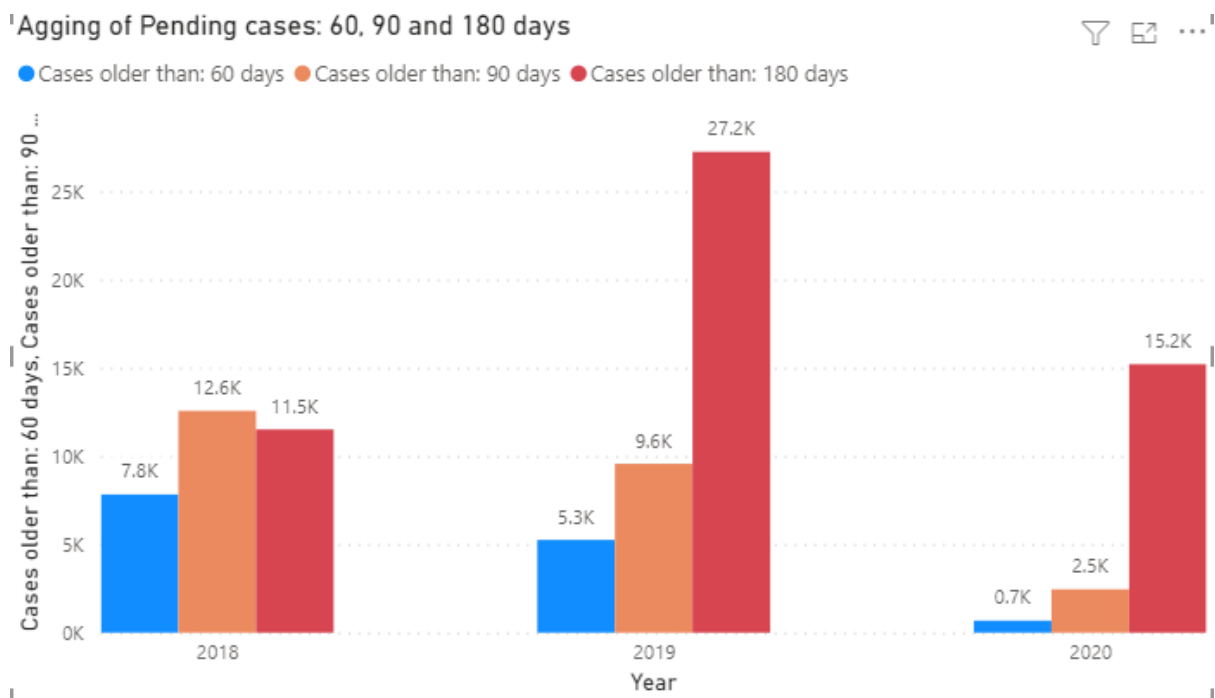
Of course, this ratio does not provide a clear estimate of the average time needed to process each case on average. For example, if the ratio indicates that two cases will be disposed of within 600 days, one case might be resolved on the 30th day and the second on the 600th day. The ratio fails to indicate the mix, concentration, or validity of the cases. Case-level data are needed in order to review these details and make a full analysis. In the meantime, this formula offers a valuable approach to reality. A shorter version of the Calculated Disposition Time formula is also available:

$$\text{Calculated Disposition Time} = \frac{\text{Number of unresolved cases at the end of period}}{\text{Number of resolved cases in a period}} * 365$$

1.2.1.4 Actual duration of case solving process

Besides calculated Disposition Time, if reporting systems of the court are sophisticated enough, it is also important to measure the duration of cases from the initial registration date. This will enable monitoring the duration of proceedings per certain predefined and agreed categories, for example, aging of pending cases per 60, 90, and 180 days.

Figure 3 Aging of Pending cases: 60, 90 and 180 days



1.2.1.5 Cases per judge (solved and pending)

Further, “productivity” as the relation of resolved cases of a certain case type per “invested” judge in the respective department is also used as an indicator.

These standardized key indicators of a court performance should be used to establish governance practices so that not only to describe symptoms (such as court-case processing delays) but also to perform diagnostics allowing for a critical assessment of court performance. This allows states to transition from applying experience-based management or “gut feeling” management (which sometimes conceals political favouritism or even corruption) to a transparent “scientific evidence” approach in managing court operations.

1.3 Institutional Capacity Building and Process Improvement

This stage should address building strategic and operational processes related to performance management like introducing standardized (short) weekly/monthly/quarterly management meetings where KPIs should be discussed at court (operational) and centralized strategic level (i.e. the Supreme Court). In that regard, clear responsibilities should be assigned to court presidents at operational as well as at the strategic centralized level (i.e. the Supreme Court).

In order to support described key court performance management processes at operational and strategic levels, implementing at least basic elements of the Public Internal Financial Control (PIFC) promoted by the European Union and required with Chapter 32: Financial control¹⁵ of the *acquis* should be considered. The PIFC requires mapping of institution structure, key processes in the state institutions, and accompanying risks that could affect declared goals and objectives of the state institutions.

The *acquis* under *Chapter 32* relates to the adoption of internationally recognized frameworks and standards, as well as good practice of the European Union, on public internal financial control, based upon the principle of decentralized managerial accountability¹⁶. The PIFC should apply across the entire public sector and include the internal control of the financial management of both national and funds of the European Union. In particular, the *acquis* requires the existence of effective and transparent management systems, including accountability arrangements for the achievement of objectives; a functionally independent internal audit; and relevant organizational structures, including central coordination of the PIFC development across the public sector. The chapter also requires an institutionally, operationally, and financially independent external audit institution that implements its audit mandate in line with the standards of the International Organization of Supreme Audit Institutions (INTOSAI) and reports to the parliament on the use of public sector resources.

In essence, the PIFC consists of "... effective and transparent management systems, including accountability arrangements for the achievement of objectives; a functionally independent internal audit; and relevant organizational structures"¹⁷. In that regard, Chapter 32 and the PIFC have a great deal of importance for both Ukraine's administration and citizens, as many policies and procedures delve into the very essence of how an administration operates, spends taxpayers' money, and if there are results for the money spent.

Finally, to ensure the integrity of data and the performance measurement, reporting procedures should be standardized (and automated eventually).

¹⁵ Please see: [Chapters of the acquis | European Neighborhood Policy And Enlargement Negotiations \(europa.eu\)](https://ec.europa.eu/eu-neighborhood-policy/enlargement-negotiations/)

¹⁶ Ibid.

¹⁷ Ibid.

1.4 Performance Monitoring and Evaluation Arrangements

At the level of the Ukrainian judiciary, Business Intelligence dashboards should be used to transparently share and visualize the performance of individual courts among the court presidents establishing a “common truth” foundation in the judiciary. In that regard, as an example cloud-based business intelligence platform including interactive dashboards was built to be used for introducing proactive court management practices in the Supreme Court, as presented in Figure 4 and Figure 5 below:

Figure 4 Supreme court Dashboard: Weekly reporting

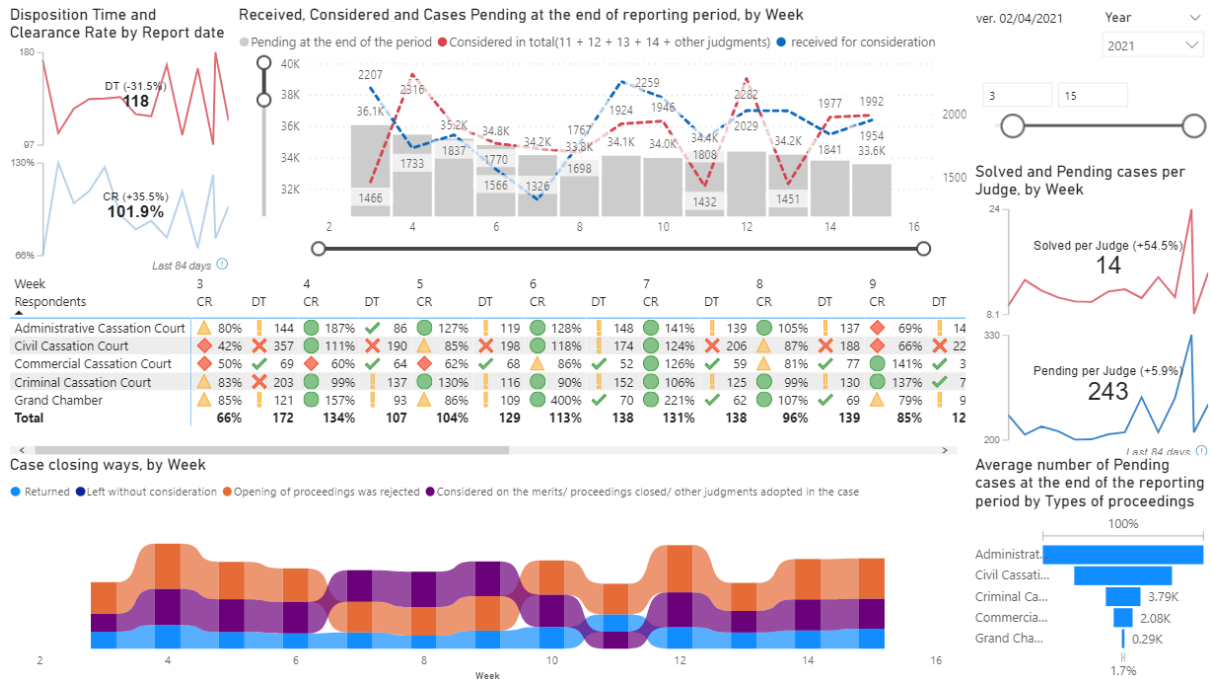
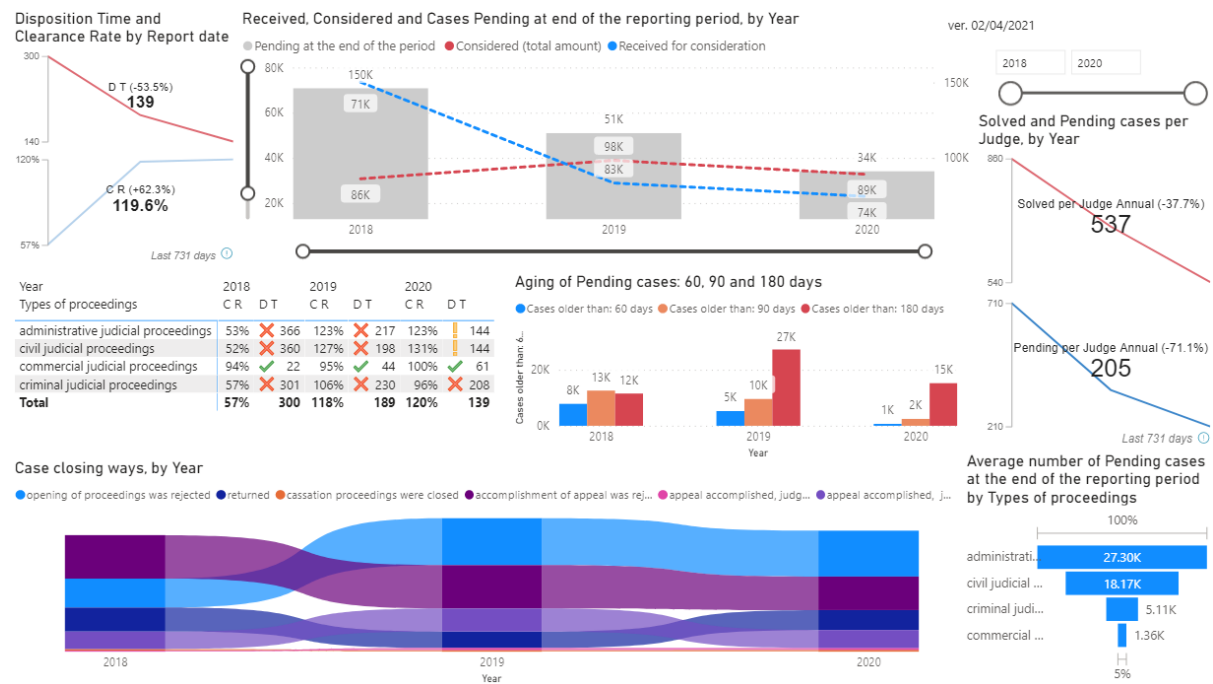


Figure 5 Supreme court Dashboard: Annual reporting



Unit related to court performance management could be formed at the strategic level (i.e. in the Supreme Court) to monitor, evaluate, formulate, and recommend policies related to court performance management. Such a unit is usually also responsible for strategic planning at the national level. Obligatory training in evaluation, monitoring, and performance management should be provided to key policymakers, court presidents, and members of the unit for monitoring and evaluation.

In that regard, the Supreme Court has already established the unit that oversees collecting, managing, and analysing the respective data. In addition, the expert conducted a workshop on how to use the developed new tools in the Supreme Court¹⁸.

1.4.1 Benchmarking

1.4.1.1 Disclaimer, limits and frames

The application of the mentioned indicators and goals should not primarily be done to rank different courts. It is to be used to identify possible problems and best practices among various courts of the same type, indicating a picture of how well a judicial system is able to cope with the workload in an efficient manner. Applying indicators and set goals have been taken into account within their following frames as illustrations¹⁹:

1.4.1.2 Clearance Rate

alarming	84%
alert	85%

¹⁸ Please follow the link for the press release of the workshop [here](#)

¹⁹ Actual baselines and benchmarks should be set by a court and judiciary taking into account goals, objectives and data from previous periods.

	95%
neutral	96%
	102%
best practice	103%

Example: Even if the overall standard deviation is around 10% of an average clearance rate of 96%, a clearance rate at or below 95% is considered an alerting warning, at or below 85% an alarm. Clearance rates up from 103% are considered a best practice.

1.4.1.3 Backlog Change

alarming	50%
alert	49%
	25%
neutral	24%
	0%
best practice	-1%

Example: The average median of backlog change of comparative courts for 2020 was 22% with extreme deviation ranges. Therefore, an increase of 50% is considered alarming, above 25% alerting, a decrease as best practice.

1.4.1.4 Average Disposition Time in days

alarming	230
alert	229
	190
neutral	189
	91
best practice	90

Example: According an average of 161 days and despite an average deviation of 94 days, durations up to 90 days are considered excellent, up from 190 days alerting and more than 230 days alarming. This rather tight frame allows useful benchmarking.

1.4.1.5 Productivity (resolved cases/judge)

Alarming	
Alert	
Neutral	
best practice	

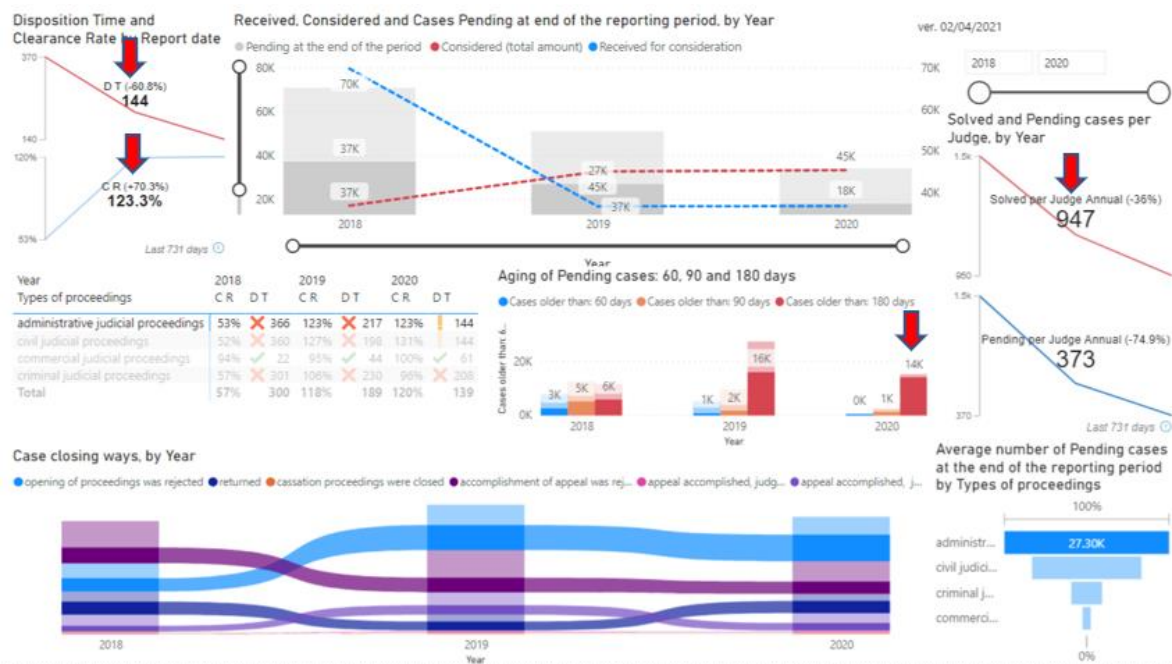
Example: A performance at or below x cases is considered alarming, up to xx an alert and from xxx and above (considering the average standard deviation from average around xxxx cases) as excellent.

If key performance indicators and accompanying goals are observed as a group, this approach will transform available court performance data into actionable knowledge for court management. Namely, when administrative judicial proceedings are selected on the interactive dashboard as presented in Figure 6 below, the following conclusions can be made:

- The Clearance Rate in administrative judicial proceedings is improving (from 53% in 2018 to 123% in 2020)
- Disposition Time in administrative judicial proceedings is improving (from 366 days in 2018 to 144 days in 2020)
- The backlog of administrative judicial proceedings is reducing (from 37106 cases in 2018 down to 17915 cases in 2020).
- 92% of all unresolved cases older than 90 days in the Supreme Court are related to administrative judicial proceedings.
- There is a drop of 36% in the number of solved administrative judicial proceedings per judge in the period 2018 to 2020.

Based on these indicators, management of the Supreme Court could recognise positive trends in reduction of the backlog of administrative judicial proceedings but also investigate further why unresolved administrative judicial proceedings are getting older than 90 days and why a number of solved cases administrative per judge is being significantly reduced.

Figure 6 Supreme Court interactive Dashboard



1.5 Policy Actions and Decision Making

In regard to actions and decision making, it is necessary to develop an early warning system with a precisely defined information workflow directed at a central coordination body (i.e. unit in the Supreme court). This could be achieved by setting up a reporting mechanism that activates supervisors to work on solution strategies once a problem is detected.

Therefore, it is a step in the right direction that the President of the Supreme Court regularly discusses the reports generated from the statistical and analytical units. It is further recommended to publish abridged versions of these reports on the justice intranet website to encourage healthy competition and initiate a process of benchmarking among the courts.

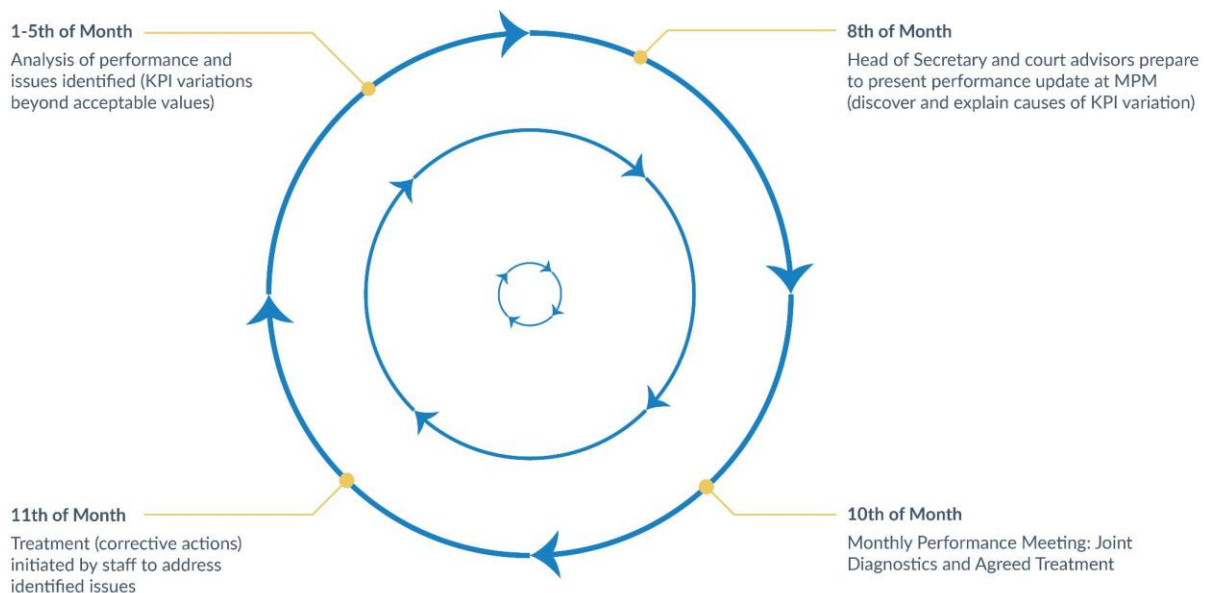
At the strategic level, the Supreme Court should react and make decisions based on policy recommendations and inputs provided by the monitoring and evaluation unit.

At the operational (or tactical) level, court presidents should manage the court using business intelligence dashboards considering KPI trends and weekly/monthly/quarterly performance management meetings at the court level.

Weekly, monthly, quarterly and annual assessments should be standardized at the level of individual court and Supreme Court in the form of performance management meeting consisting of fixed agenda, diagnostics / corrective actions and meeting minutes,

Finally, periodic review or audit of data and collection processes by an independent party should be ensured.

Figure 7 Monthly reporting and decision-making cycle



Recommendations

In light of cooperation with the Supreme Court in the first half of 2021, the following recommendations were formulated:

- The Supreme Court should continue applying the introduced practice of weekly reporting and short court management meetings to encourage active case management and proactively detect possible violations of Article 6 of the ECHR and react accordingly to prevent future violations of this article. If possible, a weekly report should also include the aging structure of unresolved cases, as illustrated in Figure 20 Aging of Pending cases: 60, 90 and 180 days.
- The Supreme Court should, as an integral part of the court management system, introduce an electronic register of cases with identified violations of Article 6 of the ECHR and monitor the status of their execution through structured and standardised court management meetings. In that regard, the following case-level data should be considered in building an electronic register of cases:
 - Unique case identification number (ID) at first instance
 - Initial (original) filing date at the first instance (initiation day from a party point of view)
 - Unique case identification number (ID) at Supreme court
 - Case registration date at Supreme court
 - Case type
 - Status of a case (status of case execution)
 - Reporting date
- The Supreme Court should consider using the Public Internal Financial Control (PIFC) approach promoted by the European Union (Chapter 32: Financial control) to develop and introduce “... *an effective and transparent management system, including accountability arrangements for the achievement of objectives...*”²⁰. Essentially, applying the PIFC would require Supreme Court to, among other things, map business processes related to monitoring and evaluation, set objectives and goals, and identify M&E process owners.

In addition, building on the experience of the Supreme court, the next steps are recommended to the Ukrainian authorities in order to introduce the proactive M&E in all Ukrainian courts. Recommendations are grouped around the main stages²¹ of development for the M&E:

Defining success

- Standardised key performance indicators like Clearance Rate, Disposition time, Cases per judge, Case flow and Backlog trend and structure, Aging of Pending cases should be considered by the High Council of Justice and the State Judicial Administration of Ukraine to be introduced in all Ukrainian courts.

²⁰ Ibid.

²¹ Based on “Monitoring and Evaluation of Court System: A Comparative Study”, CEPEJ available at <https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-monitoring-and/16807882ba> In general, these stages include: bureaucratic data collection (assessing and utilizing existing sources of data); normative framework (assessing existing definitions of success and formulating key performance indicators); institutional capacity (assessing existing institutional capacity and mapping key processes); performing monitoring and evaluation function (assessing existing monitoring and evaluation, as well as policy-making functions); and accountability and action (assessing capacity to make decisions based on evidence produced).

- Accompanying goals and targets related to key performance indicators should be set (i.e. all civil cases should be solved in six months, all criminal cases should be solved in three months, Clearance Rate should not fall below 100%, etc.) by the High Council of Justice and the State Judicial Administration of Ukraine.

Identifying data sources

- The State Judicial Administration of Ukraine should identify data sources needed for producing key performance indicators. It needs to be noted that most probably sources of data will be spread among various court departments (i.e. Human Resources, Finance and Accounting, etc.)

Capacity Building

- The High Council of Justice and the State Judicial Administration of Ukraine should develop a high-level design of the ICT system needed for introducing decentralised (at court level) and centralised clearly specifying needs and gaps related to a case management system, data warehousing, business intelligence modules, etc. In that regard, most probably close cooperation between the Supreme Court, the High Council of Justice, the State Judicial Administration of Ukraine, the Ministry of Justice of Ukraine, and the international community will be needed to secure financing of development and maintenance of such ICT system(s).
- In order to develop a court management system in every court and ensure the sustainability of digitally transformed M&E process the State Judicial Administration of Ukraine should consider using the Public Internal Financial Control (PIFC) approach promoted by the European Union (Chapter 32: Financial control) to develop and introduce “... *effective and transparent management system, including accountability arrangements for the achievement of objectives...*”²². Essentially, applying PIFC would require every court to, among other things, map business processes related to monitoring and evaluation, set objectives and goals, and identify M&E process owners. This will also require every court to introduce obligatory weekly / monthly management meetings.
- At the centralised level the Supreme Court, the High Council of Justice, the State Judicial Administration of Ukraine, should receive training in scientific methods for M&E. In that regard, a multidisciplinary team should be formed at a centralised level so that they can also perform the function of training in M&E for individual courts and court presidents.

Turning data into actionable knowledge, Performing M&E

- At the court level, court presidents with heads of departments should at least on monthly basis, measure court performance using standardised key performance indicators and goals and objectives set at a centralised level by the Supreme Court, the High Council of Justice, the State Judicial Administration of Ukraine.
- At the court level, for courts that fail to reach set targets, annual reporting in a standardised form containing cause-and-effect analysis should be introduced. The report should contain information on: *Why is there a problem?* (What happened since the previous report from last year?), *What has the president done to improve or support the spotlighted court department?* and *What are the president's suggestions to the State Judicial Administration of Ukraine?*

²² Ibid.

- At the centralised level, benchmarking among the courts should be performed at least once a year using standardised key performance indicators.
- Based on performed benchmarking and “cause and effect analysis” using court reports, the State Judicial Administration of Ukraine would, if needed, prepare policy options / recommendations for improving court performance through i.e. reallocation of resources, training, better management practices, etc.

Taking the lead: Accountability and Action

- At the court level, court presidents with heads of departments should be obliged to take or suggest remedial actions whenever problems surface.
- At the centralised level, the Supreme Court, the High Council of Justice should consider policy options / recommendations prepared by the State Judicial Administration of Ukraine.

APPENDIX: Dashboards views by Week and Year

1.6 View by Week

Figure 8 Disposition Time and Clearance Rate by Report date

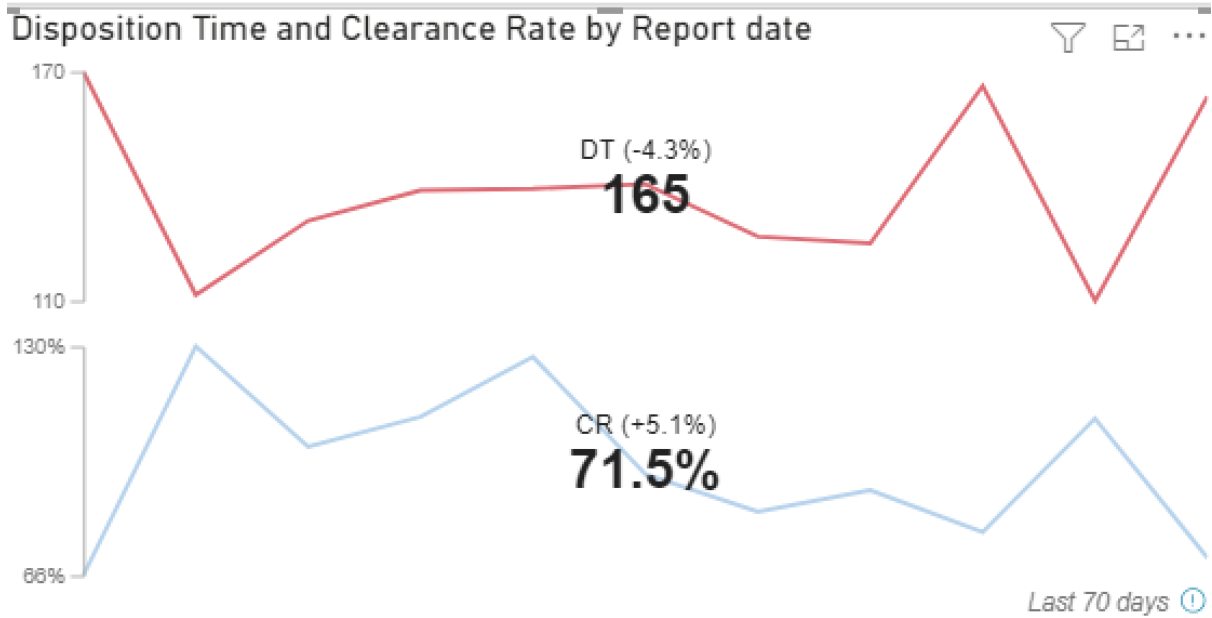


Figure 9 Received, Considered and Cases Pending at the end of reporting period, by Week

Received, Considered and Cases Pending at the end of reporting period, by Week

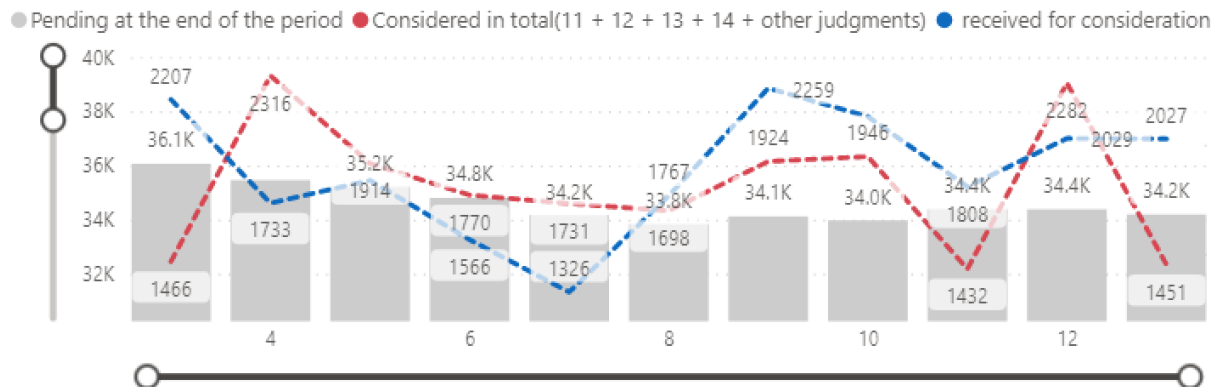


Figure 10 Year filter and week filter

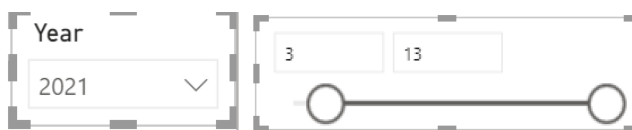


Figure 11 Clearance Rate and Disposition Department per Court and Week

Week Respondents	5		6		7		8		9		10		11		12		13	
	DT	CR	DT	CR	DT	CR	DT	CR	DT	CR	DT	CR	DT	CR	DT	CR	DT	
Administrative Cassation Court	119	128%	148	141%	139	105%	137	69%	149	82%	132	85%	153	139%	97	63%	179	
Civil Cassation Court	198	118%	174	124%	206	87%	188	66%	223	78%	184	61%	246	68%	192	64%	230	
Commercial Cassation Court	68	86%	52	126%	59	81%	77	141%	39	113%	54	67%	131	102%	46	68%	98	
Criminal Cassation Court	116	90%	152	106%	125	99%	130	137%	70	153%	75	109%	131	132%	92	135%	94	
Grand Chamber	109	400%	70	221%	62	107%	69	79%	92	46%	130	41%	240	88%	141	125%	103	
Total	129	113%	138	131%	138	96%	139	85%	124	91%	122	79%	168	112%	105	72%	165	

Figure 12 Case closing ways, by Week

Case closing ways, by Week

● Returned ● Left without consideration ● Opening of proceedings was rejected ● Considered on the merits/ proceedings closed/ other judgments adopted in the case

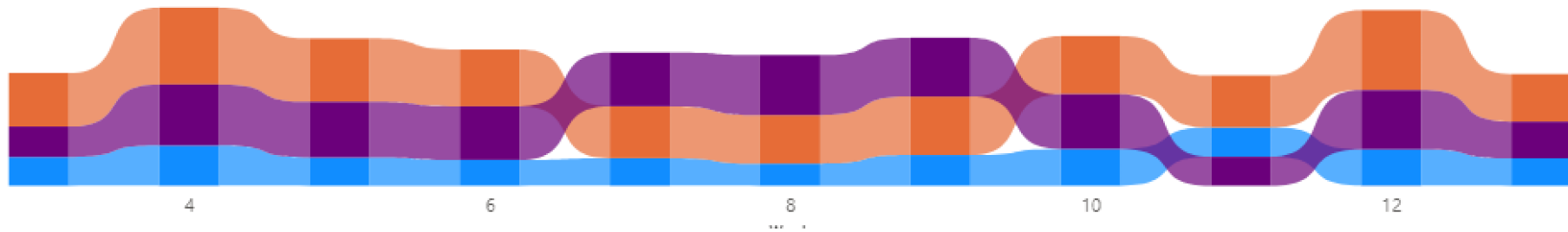


Figure 13 Solved and Pending cases per Judge, by Week

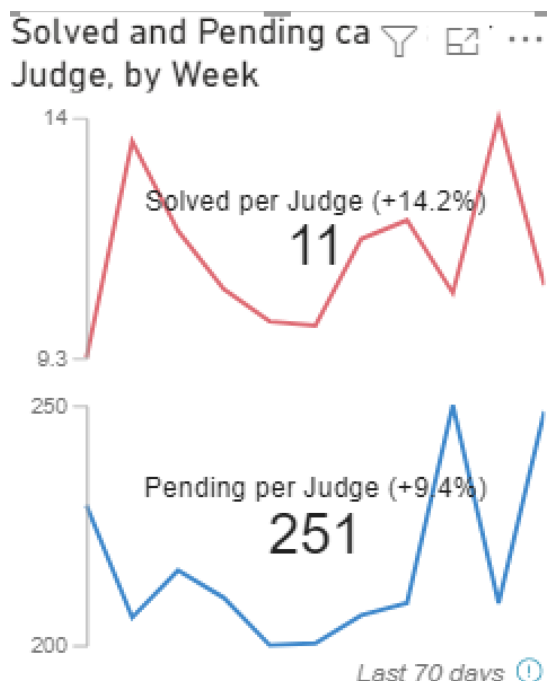
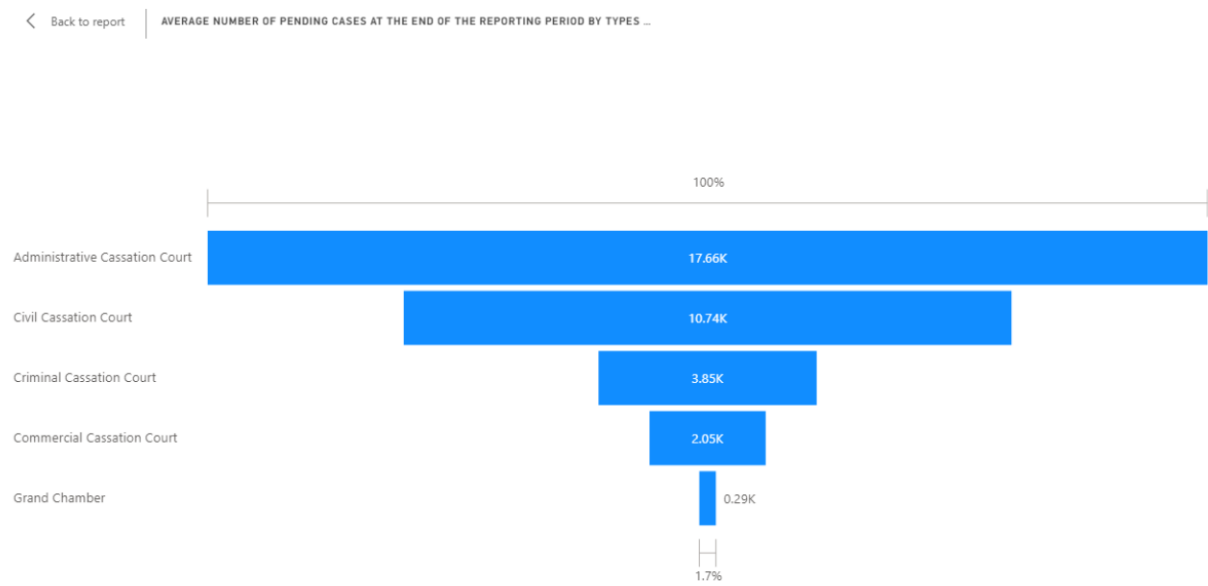


Figure 14 Average number of pending cases at the end of the reporting period by Types of proceedings



1.7 View by Year

Figure 15 Disposition Time and Clearance Rate by Report date

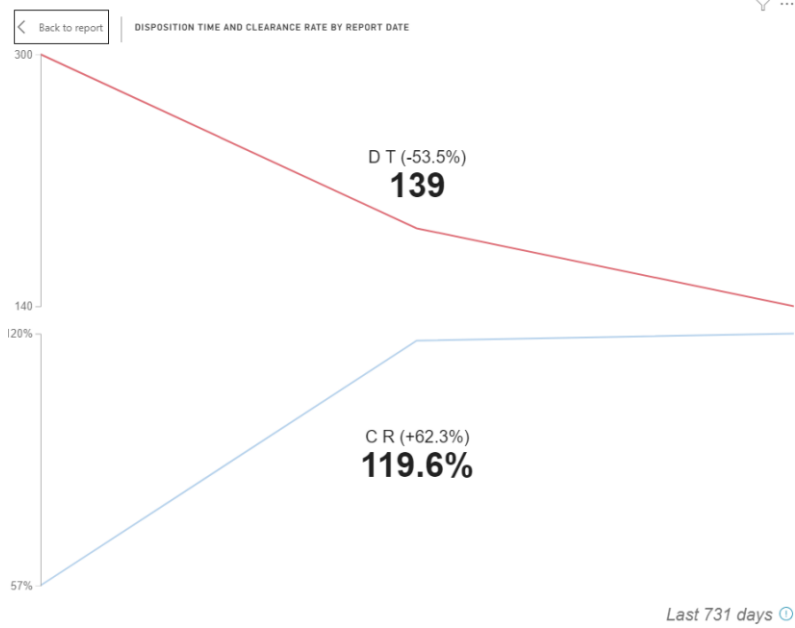


Figure 16 Received, Considered and Cases Pending at the end of reporting period, by Year

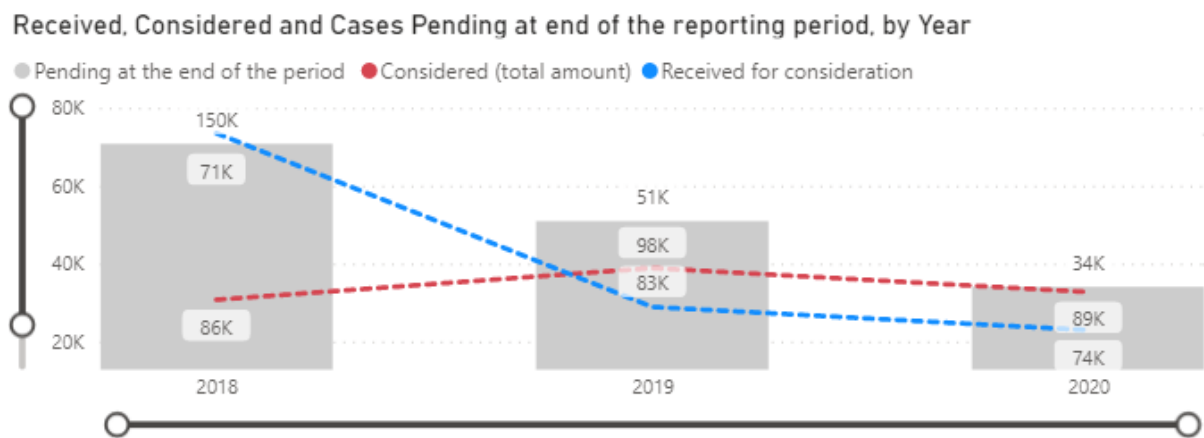


Figure 17 Filter by year



Figure 18 Solved and Pending cases per Judge, by Year

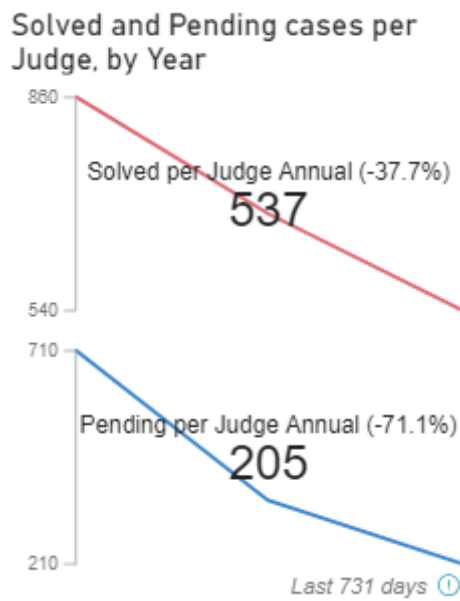


Figure 19 Clearance Rate and Disposition Department per Court and Week

Year	2018		2019		2020	
	C R	D T	C R	D T	C R	D T
administrative judicial proceedings	53%	✗ 366	123%	✗ 217	123%	! 144
civil judicial proceedings	52%	✗ 360	127%	✗ 198	131%	! 144
commercial judicial proceedings	94%	✓ 22	95%	✓ 44	100%	✓ 61
criminal judicial proceedings	57%	✗ 301	106%	✗ 230	96%	✗ 208
Total	57%	300	118%	189	120%	139

Figure 20 Aging of Pending cases: 60, 90 and 180 days

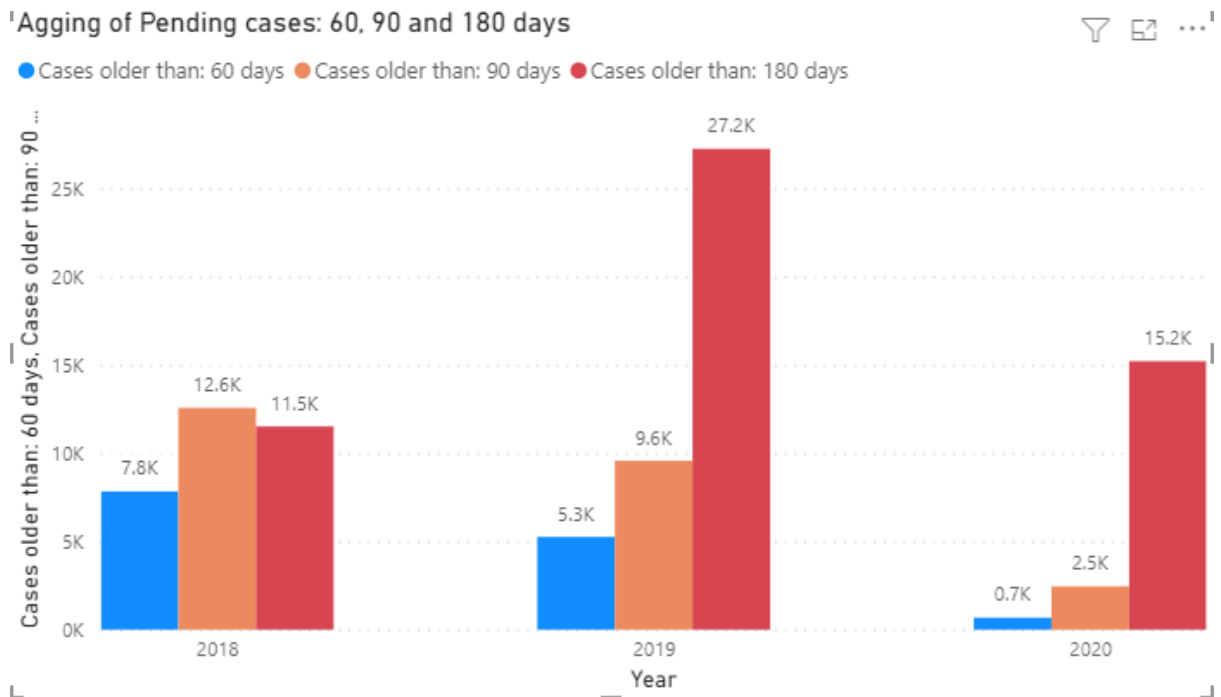


Figure 21 Average number of pending cases at the end of the reporting period by Types of proceedings

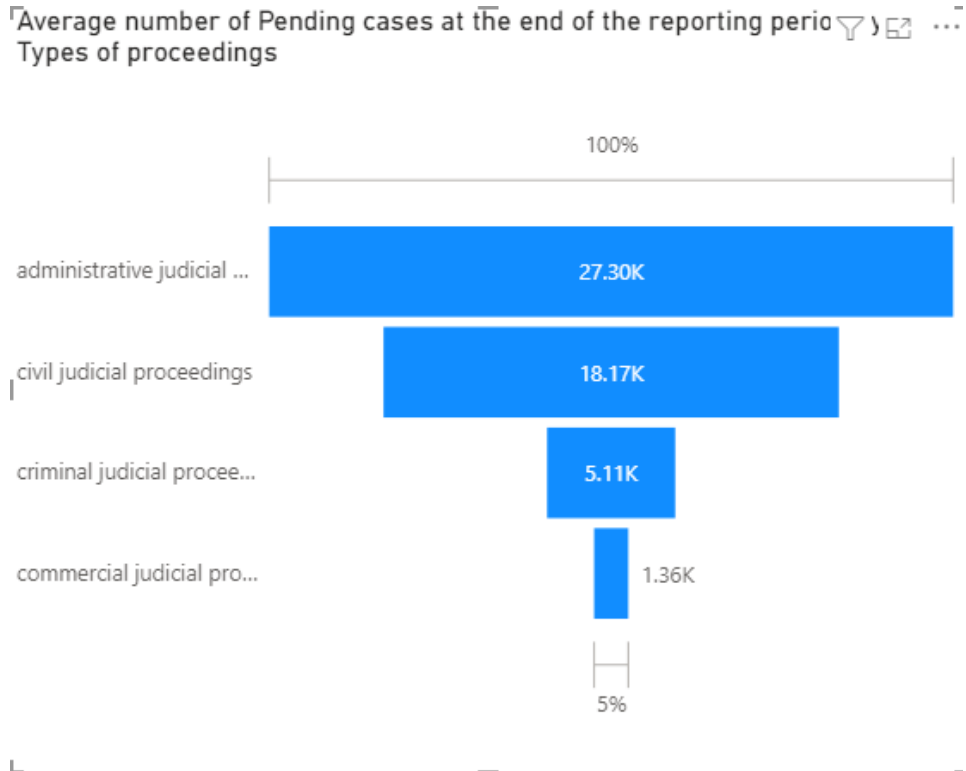


Figure 22 Case closing ways, by Year

Case closing ways, by Year

